



The Commonwealth of Massachusetts Department of Early Education and Care

Process for Contesting the Findings of a Visit or Investigation	Field Operations Policy
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- ❖ **Applicable to: Family Child Care, Group and School Age Child Care, Funded Programs**
- ❖ **Effective date: October 1, 2019**
- ❖ **Supersedes: New Policy**

Types of Programs Affected:

Family Child Care
Group and School Age Child Care
Funded Programs

Overview:

Throughout the visit and investigation process, programs have multiple opportunities to contest the results of the visit or investigation. Formal appeals are granted based on the regulatory action taken, if applicable.

Regulations Impacted:

45 CFR § 98.33

The Lead Agency shall:

(a) Certify that it will collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities, including:

(4) Results of monitoring and inspection reports for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall . . . establish a process for correcting inaccuracies in the reports.

Approach and Philosophy:

EEC highly values its relationships with its child care providers and believes that a strong, collaborative relationship leads to the safest environment for children. On occasion, EEC must strictly enforce its regulations to ensure the health and safety of children, particularly when significant regulatory non-compliances are identified that jeopardize children's health and safety.

Right to Contest Citations - Process for Visits:

1. On a typical monitoring visit, EEC licensing staff will use a "monitoring tool" which specifies the visit items that the licensor must observe or inspect during the visit. For each visit item, the licensor will mark whether that item is:
 - a. Compliant: the program met the regulatory requirement for that visit item.
 - b. Non-compliant: the program failed to meet the regulatory requirement for that visit item.
 - c. Non-assessed: The licensor was unable to assess the visit item based on the circumstances (for example, a licensor may not be able to inspect the backyard of a family child care home due to a recent snowstorm covering the backyard in a foot of snow).
 - d. Not applicable: The visit item does not apply to that particular program (for example, a visit item for safe sleep would not apply to a program that does not care for infants).
2. During the visit, EEC licensing staff will engage with program directors and program staff. The licensor retains the discretion not to cite the program for minor non-compliances that are corrected during the visit.
3. At the conclusion of the visit, the EEC licensor will conduct an Exit Interview with the program director, family child care provider, and/or administrators. During the Exit Interview, the EEC licensor will:
 - a. Inform the program of the citations for non-compliance the program will receive.
 - b. Provide technical assistance to the program in areas where the program could improve.
 - c. Have a dialogue with the program about the visit overall and what to expect in the future.
4. Following the conclusion of the visit, the EEC licensor will issue any statements of non-compliance to the program, stating the non-compliance observed and the corresponding regulation violated. These statements of non-compliance are provided to the program through the Licensing Education Analytics Database ("LEAD") Portal.
5. The Provider must respond to each specific statement of non-compliance in a written corrective action plan. The corrective action plan must specify how the program will correct the non-compliance. Through corrective action plans, programs have an ability to respond to any statement of non-compliance in their own words. Programs

submit corrective action plans using the LEAD Portal, generally within fourteen days.¹

6. The licensor must then approve or reject all corrective action plans. All rejected corrective action plans are returned to the program with instructions on how to adequately respond to the statement of non-compliance.
7. Once all corrective action plans are accepted, the visit is closed.

Right to Contest Citations - Process for Investigations:

1. Upon being assigned to the case, the investigator² will conduct a thorough investigation of the allegations, which may include (but is not limited to), a program visit, interviews with administrators, providers, educators, and staff, interviews with children, coordination with the Department of Children and Families, coordination with police or district attorneys' offices, etc.
2. At the conclusion of the visit, the investigator will determine what (if any) regulatory non-compliances were identified during the investigation.
3. At the conclusion of the investigation, the investigator will conduct an Exit Interview with the program director, family child care provider, and/or administrators. During the Exit Interview, the investigator will inform the program as to which citations for non-compliance the program will receive.
4. Following the conclusion of the investigation, the investigator will issue any statements of non-compliance to the program, specifically stating what non-compliance was observed and the corresponding regulation violated. These statements of non-compliance are provided to the program through the LEAD Portal.
5. The Provider must respond to each specific statement of non-compliance in a written corrective action plan. The corrective action plan must specify how the program will correct the non-compliance. Through corrective action plans, programs have an ability to respond to any statement of non-compliance in their own words. Programs submit corrective action plans using the LEAD Portal.
6. The program's licensor must then approve or reject all corrective action plans. All rejected corrective action plans are returned to the program with instructions on how to adequately respond to the statement of non-compliance.
7. Once all corrective action plans are accepted, the investigation is closed.

Correcting Inaccuracies in the Visit and Investigation Reports

¹ EEC's regulations require that a corrective action plan be submitted within a reasonable time identified by EEC, but no later than 30 days. *See* 102 CMR 1.06(4). The time EEC typically requires for submitting a corrective action plan is fourteen days. Occasionally, programs may request an extension of this time but EEC cannot extend the timeline beyond thirty days.

² Or licensor, if the licensor has been assigned to conduct the investigation.

Any inaccuracies with the information in the investigation or visit reports should be reported to the program's EEC licensor. If an inaccuracy is identified after a report is posted, then EEC will review the information and determine within seven (7) days whether it should be removed or corrected. Depending on the seriousness of the inaccuracy, EEC may correct or remove the information online immediately until it can resolve the inaccuracy. If the inaccuracy is minor, then EEC will not remove the information and will apply the correction within 30 days.

If the non-compliance relates to legal action that is under appeal, then EEC may correct or remove information to align with the final outcome of the appeals process. Such changes must occur within 30 days of the final outcome.

Rights of Appeal

A program has the right to formally appeal the findings and results of an investigation. The right to a formal appeal is dependent on the regulatory action that EEC intends to take against the program, consistent with due process and EEC's regulations.

EEC Non-Compliances

A program's right to appeal any EEC-issued non-compliance is simply the ability to respond to the finding in a corrective action plan. There is not a formal appeals process beyond the corrective action plan unless EEC takes additional legal action (such as by issuing sanctions, an emergency suspension order, a revocation order, refusal to issue, refusal to renew, or a fine). *See* 102 CMR 1.08.

Request for Administrative Reconsideration

The right to file a Request for Administrative Reconsideration extends to a program when EEC sanctions a program. *See* 102 CMR 1.08(1)(a). The licensee may file with the General Counsel a written request for administrative reconsideration. *See id.* The request is limited to direct and specific reasons why the notice of sanction or any portion should be rescinded or modified. *Id.* Within 15 business days after receipt of a Request for Administrative Reconsideration, the EEC General Counsel shall grant, deny, or otherwise act on such request. *See* 102 CMR 1.08(1)(b).

Request for Formal Hearing

The right to file for a formal hearing extends to a program when EEC intends to impose the following regulatory action on a program:

- Denial of issuance of a license
- Refusal to renew a license
- Revocation of a license

- Issuance of a probationary license
- Suspension of a license
- Imposition of a civil monetary fine on a program

Should EEC take the above regulatory actions against a program, the program may file an appeal with the Division of Administrative Law Appeals (“DALA”) within 21 days of date of the receipt of the legal order *See* 102 CMR 1.08(2)(a). For an emergency suspension of a license, the program must file their appeal within five business days. *See* 102 CMR 1.07(5)(a). From there, the program is entitled to an administrative hearing pursuant to the Standard Adjudicatory Rules of Procedure – Formal Rules set forth at 801 CMR 1.01. *See id.*

At the conclusion of the hearing, the DALA Administrative Magistrate will issue a recommended decision. The EEC Commissioner will then issue a Final Agency Decision regarding the regulatory action taken. *See* 102 CMR 1.08(2)(b). If a Final Agency Decision is not issued within 180 days, then the Recommended Decision by the DALA Administrative Magistrate becomes the Final Agency Decision. *See* 801 CMR 1.01(11)(c)3.